

STATE OF MONTANA BUDGET PROCESS: MANAGING CHANGE

A Report Prepared for the
Legislative Finance Committee
Budget and Appropriations Subcommittee

By
Clayton Schenck

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Legislative Fiscal Division



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PURPOSE

The Montana Legislature's process for approving a state budget includes procedures directed in the Constitution, state statute, legislative rules, and "institutional" procedures unsupported by laws or rules, hereafter referred to as "institutional processes". Actions in recent legislative sessions to re-order or manipulate the statutory and institutional budget processes practiced by the legislature have created concern among legislators, and prompted the Legislative Finance Committee to include a study of this issue in its 2009 biennium interim work plan. These concerns included issues of fairness, transparency of process and product, citizen opportunity for involvement and understanding, and integrity of the budget process. The Budget and Appropriations Subcommittee of the LFC included this topic as one of its priority issues for study during the current interim between regular legislative sessions.

The purpose of this report is to provide a framework for this study, including background information about the legislative budget process, legislative budget authority, consequences of sudden changes to established budget processes, and examples of recent session actions that have generated concerns about the integrity and efficiency of the legislative budget process.

BACKGROUND

Among the most powerful duties assigned to the legislature in the Constitution is the sole authority to appropriate funds for the operations of state government and its programs and services. The legislature approves a multi-billion dollar budget each biennium, and the process for completing such a major task is complex and sophisticated. It is supported by the constitution, statutes, rules, and tradition or system practices. A structured framework for such a major task is a major tenet of a directed and efficient budget process. When established practices are interrupted or changed, they need to be carefully deliberated and executed to maintain efficiency and quality of the budget decision-making process.

LEVELS OF AUTHORITY

The following narrative provides a brief synopsis of the levels of authority for the state budget process.

Constitution

The state Constitution gives sole authority to the Legislature to appropriate state funds. It also directs the Governor to submit a budget to the Legislature for consideration. Another primary budget principle of the Constitution is the requirement that the legislature must approve a balanced budget, i.e., that there must be sufficient expected revenues to support the level of expenditures approved. This provides a basic framework for the budget process, and the details are left to statute and other levels of authority.

Statutes

In general, statutes establish broad procedures for carrying out the appropriation authority of the legislature and directions to the Governor on how the budget is to be submitted. Related to the legislative appropriation process, it sets requirements such as the base biennium that is to be used to build the budget, the requirement to distinguish between present law adjustments versus new proposals, and certain limitations. Relative to the Governor's authority to submit the budget, statute provides guidance on what features the budget must contain, formatting requirements for budget submission, budget submission deadlines, and other timelines.

Legislative Rules

Legislative rules provide the general budget hearing and approval process, and deadlines that the legislature will use to adopt a budget. The rules provide specific treatment for a general appropriations act and other appropriations bills, such as the allowance for the use of joint subcommittees to hear appropriations bills (this is permissive, not required – the decision is left to the chairman of the House Appropriations Committee).

Institutional Processes

Institutional processes are those budget processes that have no specific authority or requirement (such as constitutional, statutory, or rules) for adherence to such procedures. They exist largely on the basis of tradition, systems limitations, and general acceptance of those processes. However, since they are not backed by any law or rule, changes made to these processes by someone with authority can't be challenged based on law, and could have a significant impact on the budget process, including consistency and clarity of the process.

Examples of institutional processes are as follows:

- The 30 year use of a single general appropriations act for the general operations of state government
- The procedure used for budgeting for personal services, i.e., by specific FTE
- The related use of vacancy savings
- The use of an incremental budgeting basis for the budget process
- The use of joint subcommittees to make budget recommendations (authorized in rules but not required)

Spirit of the Law

In addition to the levels of budget authority discussed above, there is the additional issue of complying not only with the letter of the law, but also with the spirit of the law. Statutes are written to compel certain behaviors and procedure, but language either can't or unintentionally doesn't always preclude attempts to circumvent the intended objectives of the law.

Examples of circumventing the spirit of the law while staying within the letter of the law would be:

- the 2007 session decision to hold the revenue estimate resolution in the original committee, statutorily allowing the revenue estimates to be controlled by one committee with no input from the full legislature
- Using procedural and diversionary techniques such as fund switches and budget timing switches to circumvent the expenditure limitation statute (2005 session)

CHANGES TO THE PROCESS: CONSEQUENCES

The state budget process, like most legislative procedure, is steeped in tradition, highly structured, and intended to allow careful deliberation and opportunity for public input. The established process, whether in law or institutional, is the basis for the infrastructure necessary to do the work in the 90 days allowed by the Constitution. Changes don't come easily. When they do, planning and appropriate procedure are essential to maintain the integrity of the legislative process. Both intended and unintended consequences on both process and policy must be taken into consideration.

SO WHAT'S THE ISSUE?

As stated above, substantive changes to the legislative budget process in recent sessions created significant controversy and unintended consequences, and resulted in the LFC creating a subcommittee to examine the impacts of such changes and how to effectively manage such changes in the future. Recent changes or attempts at changes are discussed below for the purpose of identifying the potential consequences and actions that should be taken into consideration prior to making such changes.

The impacts discussed in this report focus primarily on procedural, as opposed to policy impacts, although there is not always a clear distinction between procedural or policy issues. The objective of this staff report is to focus on objective issues related to process and efficiency of the budget process, and to simply frame the issue for policy discussions by the subcommittee. However, there can be staff issues with policy that fit within the statutory role of the Legislative Fiscal Analyst, and they will also be addressed.

EXAMPLES OF RECENT CONTROVERSIAL BUDGET PROCESS CHANGES

Revenue Estimate Resolution

The legislature budgets on a biennial basis for the operations of state government. Determination of the revenues available to fund these appropriations while achieving a balanced budget has been established through

a revenue estimating resolution. Statutory language provides that even if the resolution as introduced does not get through the full passage and approval process, the last legislative action taken on the bill is to be used as the official legislative revenue estimate. This provisional language was clearly intended for the express purpose of ensuring there is an official revenue estimate for the purpose of arriving at a constitutionally balanced budget, in the event the resolution doesn't get final approval and passage. It would be hard to argue that the practice of using the permissive "loophole" in this language to hold the bill in a committee and to preclude legislative debate and adoption by either house is within the spirit of the law, even though within the letter of the law. Yet in the 2007 session, the House Taxation Committee never voted the resolution out of committee, resulting in an official revenue estimate that prevented either the House or Senate from any dialogue or input into one of the most powerful decisions (i.e., one-half of the budget equation and the limit on expenditures) in the 2007 session. The intent of holding the bill "hostage" was made clearly evident with public discussions by legislators about the intent to "dramatically reduce the revenue estimates" to force budget reductions if certain levels of expenditure reductions weren't agreed upon¹.

From a procedural standpoint, staff needs to know the final decision of the legislature on setting the revenue side of the budget equation in order to calculate the projected ending fund balance. Further, when there is an indisputable stated intent to change the revenue estimates for political reasons that will substantively misrepresent a true revenue estimate, it creates a quandary for both staff and the legislature as to what will be used for the official revenue estimates, and by what authority. Legislative staff is placed in a very difficult position of having to react to a politically charged maneuver. The non-partisan role of staff is placed at risk. While an unintended consequence, these impacts must be taken into consideration when making such changes.

Single versus Multiple Appropriations Bills

The new Constitution in 1972 provided for a more structured governmental organization, and the budget process was significantly revised as a by-product of some of the organizational changes. The first single general appropriations act for the operations of state government was introduced in the 1977 legislative session, and was passed and approved for the 1979 biennium operating budget. It has become "institutionalized" over the past 30 years, even to the point of being referenced frequently in statute, and in the design of the state budget system (MBARS software), which presumes a single general appropriations act.

When leadership of the House of Representatives decided to replace the single appropriations bill with multiple bills in the 2007 legislative session, it created significant controversy. In addition to the policy goals of House leaders, the manner in which the change was implemented had numerous procedural consequences.

- The legislature as a whole, the public, and legislative staff were not informed until just prior to introduction of the multiple bills. This left no time for staff to plan and adjust institutionalized processes to accommodate such a procedure.
 - The legislative budget system (MBARS) that generates the data for the general appropriations act was not designed to manage multiple budget bills. In order to use the system to manage several budget bills, there had to be significant work-arounds to "trick" the system to accommodate multiple bills. This end-around work significantly increased the risk of error. With proper notice, consideration might have been made to revise the system to accommodate multiple bills. Staff was left at risk by having to abandon the checks and balances and other quality control measures built into both the budget system and the LAWS system. Future actions such as this need to be carefully planned and will require systems changes and the accompanying cost investments to facilitate the change.
 - The decision to introduce multiple bills based on individual legislator issues and to essentially abandon the subcommittee work also raised issues. It was done after subcommittees had met for several weeks to consider the bill (Governor's budget) that was subsequently replaced by new bills. It raised concerns about the process of holding extensive public hearings and debate on a bill that was pre-destined to be killed, and of the suspension of the joint subcommittees

¹ Note: When the 2007 regular session ended without passing a budget including a revenue estimate resolution, the Governor's special session call to pass a budget didn't include authority for a revenue estimate resolution, nor did the legislature expand the call to allow introduction of such a measure.

before their work was completed. Other concerns raised included the lack of transparency of the action, lack of public input, and lack of legislative input/buy-in to the decision.

Budget Base

In the 2003 legislative session, when the state was facing a significant budget shortfall (i.e., lacking revenues to even fund continuation of the level of services funded by the previous legislature), the Governor submitted a budget that was based on the statutory requirements for submission of a budget, including the requirement to use the base expenditures from the last completed biennium as the starting point for the budget. In compliance with statute, present law costs were identified, and reductions were then proposed for prioritized reductions in the budget to match declining revenues and attain a balanced budget. The legislative staff budget analysis also followed statutory directive, using the prescribed base for budget characterization and analysis.

On the first day of the 2003 legislative session, a proposal supported by House and Senate Appropriations leadership was brought forth to revert to the FY 2000 budget base, as opposed to the FY 2002 budget base used by the executive in compliance with law to submit a budget. This left the legislature with a gap of hundreds of millions of dollars between the base budget as submitted and the starting point approved by the appropriations committees.

The policy merits of this action are left to subcommittee debate. The negative consequences of this action were substantial:

- The base from which a budget is drafted becomes the framework for all proposals from that point forward, and is the basis for justification of the proposals. When a totally different base was adopted, it left a budget gap that was inexplicable².
 - Staff and agencies were given the impossible task of explaining the difference. There was no common base from which to reconcile differences.
 - Reversion to a prior base ignored the basis of any changes, including major reorganizations that shifted funding for programs between divisions and departments, funding changes, and other adjustments precipitated by a dynamic process that made the revised base irrelevant, and made it difficult to complete an informed and sensible budget decision and prioritization process.
 - Subcommittees were confused, the public was confused, and staff and agencies spent numerous added hours to try to assist the legislature. The end result was that the joint appropriations subcommittees spent the majority of their 45 day deliberations adjusting substantially back to the original 2002 budget base, and were left with a very short time to deliberate the Governor's proposals. The end product was substantial adoption of the Governor's original budget proposal.
 - Legislative staff were not informed in advance of the move, and had no opportunity for planning and adjustment, and the budget analysis of legislative staff was not contemplated to assist the legislature with such a move.
- A question of both letter and spirit of the law are relevant to this issue.
 - The Constitution provides direction and authority to the Governor to submit a budget proposal, as head of state and chief operating officer for the executive branch, for consideration by the legislature. Statute dictates requirements for the Governor's submission, including the use of the previous biennium expenditures as a starting base for development of the budget. While perhaps within the letter of the law, it does not seem to be within the spirit of the law to require the Governor to submit the budget in a specific way and for the legislature to then use a different process that makes reconciliation virtually impossible.
 - However, statute (17-7-131, MCA) does provide a requirement that "...the budget bill for the maintenance of the agencies of state government and the state institutions must be based upon the budget and proposed budget bill submitted at the request of the Governor." This language is arguably vague, but could have been grounds for legal challenge to an action that effectively abandoned the Governor's budget as the basis for the budget bill (at least in the first half of the

² Note that the Governor's Budget as submitted had achieved a relatively similar reduction (in order to achieve a balanced budget). The legislative action took a radically different approach to get to a similar end. However, the Governor's budget submission and the LFD analysis provided a trail to support the adjustments. The legislative action left no such trail.

budget process). If not letter of the law, it certainly brings into question adherence to the spirit of the law.

Other Examples?

This report uses three recent and highly controversial examples to frame the issues surrounding abrupt changes to the traditional (statutory and institutional) state budget process. It is not intended to be all inclusive. An example of an attempted change by the legislature, exercising their prerogative for specifying budget submission requirements, used the traditional means of legislation in the 2007 session to compel the Governor to comply with the law (proper classification of present law adjustments versus new proposals). It resulted in a Governor's veto. This example and others that the committee identifies might also be considered by the subcommittee in examining best practices in management of budget process changes.

SUBCOMMITTEE ACTION

Policy Discussion Options

As the subcommittee examines the impacts of managing budget process change, it may wish to address the following broad policy issues related to budget actions such as creating multiple bills, base changes, and limiting legislative input to the revenue estimate resolution:

1. Transparency of such an action to both legislators and citizens
2. The opportunity for both legislator and citizen involvement
3. Citizen and legislator accessibility/understanding of the issue
4. The issue of timing and announcement of proposed changes

Managing Change: Subcommittee Product Options

The Budget and Appropriations Subcommittee may wish to consider several options for improving the planning and implementation of budget process changes in the future.

1. Develop proposed legislation or legislative rules to address these issues and to provide a more systematic and enforceable means of implementing change
2. Develop guidelines, "rules of engagement", a "memorandum of understanding", or other guiding policy for the future consideration of budget process changes
3. Encourage legislative leadership to consider LFC proposals and sanction/support their implementation
4. A combination of the above
5. Take no action

SUMMARY

The legislative process of passing laws and appropriating billions of dollars for the operations of state government requires a complex and sophisticated process to ensure fairness, equity, and efficient use of taxpayer dollars. It must be understandable and respected by the legislature if it is to be respected by the citizenry. Changes to the process of a material nature must be carefully planned and implemented to prevent discord, disorganization, and alienation from the process.

Though not all-inclusive, the examples used are intended to provide an understanding of the issues that have raised concerns in the past about the integrity of the legislative process and the respect of the legislative institution. These and other examples raised by the committee will provide a basis for committee discussion of how to better manage and implement such changes in the future.